IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.688 OF 1992

R.K.Jain, residing at
Flat No.120, BPCL Colony,
Aziz Baug, Chembur, Bombay-400 074. Petitioner

vs.

1.Bharat Petroleum Corporation Ltd.,
4-6, Currimbhoy Road, Ballard
Estate, Bombay-400 038.

2.Raj Kumar Gajree, Chairman &
Managing Director, Bharat
Petroleum Corporation Ltd.,
4-6 Currimbhoy Rd., Ballard
Estate, Bombay 400 038.

3.R.K.Batra, The Director,
(Marketing) since Retired on
30/9/91, through Bharat Petroleum
Corporation Ltd.

4. T. Vasudevan,
since retired on 30/11/91
Bharat Petroleum Corporation Ltd.,
12th Floor, Maker Tower,
Cuffe Parade, Bombay 400 005.

5. P.L.Mehta, General Manager (Sales),
Bharat Petroleum Corporation Ltd.,
4-6 Currimbhoy Road, Ballard Estate,
Bombay 400 038.

6. A.K.Agarwal, The G.M.(Audit),
Bharat Petroleum Corporation Ltd.,
1st Floor, Udyog Bhawan, Ballard
Estate, Bombay 400 038.

7. Rajkumar Varma G.M.(Staff & IR),
Presently working as G.M.(West),
Bharat Petroleum Corporation Ltd.,
4-6 Currimbhoy Road, Ballard Estate,
Bombay 400 038.

Mr.S.S.Pakale for the petitioner.

Mr.J.P.Cama, Senior Counsel with Mr.Ganesh Shetty
i/b.M/s.Crawford Bayley & Co. for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 30th August, 2006

ORAL JUDGMENT :

The petitioner has challenged the order of dismissal dated 19th August, 1991 passed by respondent no.3 based on the report of the Enquiry Officer dated 7th December, 1990. The Enquiry Officer has held the petitioner as guilty of the charges levelled against him. By an order dated 27th November, 1991 the appellate authority-respondent no.2 has also confirmed the said order of termination of the service.

2. The case of the petitioner may be shortly stated. The petitioner was appointed as a Deputy Manager (Engg.) in the office of respondent no.2 on 20th October, 1982. He was posted on a job to coordinate and supervise the quality of the construction work of the housing project at Gokuldham, Goregaon. On the allegations that the buildings were not fit for occupation, a CBI enquiry was started. According to the petitioner, respondent no.2 was not therefore comfortable with the petitioner and as such he was transferred from Gokuldham Project to Butcher Island Project. The petitioner had also became a General Secretary of the Management Staff Association some time in the month of October, 1984. The petitioner detected irregularities in payments at Butcher Island Project in the month of February, 1986. The petitioner

was thereafter kept idle without job for two years upto 14th May, 1988. In the meantime, respondent no.1 introduced a scheme known as "Employees Contributory Superannuation Scheme". The petitioner objected and challenged the same in the year 1987. Respondent no.2 it is alleged on account of these activities developed a personal grudge against the petitioner.

3. The petitioner by an order dated 21st June, 1989 and release letter dated 22nd June, 1989 was posted as Deputy Manager (Engg.) (Construction), Vizag and directed to report by 10th July, 1989. The petitioner being aggrieved by the same had preferred Writ Petition No.1908/1989 and obtained a stay on the said transfer. The respondent-corporation filed an appeal against the said order of stay (Appeal No.979/1989). On 26th September, 1989, the appellate court vacated the stay order on petitioner's transfer. The petitioner was advised to report by 3rd October, 1989 by communication dated 26th September, 1989. The petitioner filed a special leave petition and the Apex Court on 6th October, 1989, after hearing, dismissed the same. The counsel for the petitioner sought time of 14 days to enable the petitioner to report on duty which was granted. By a communication dated 11th October, 1989, the respondents, again directed the petitioner to report by 23rd October, 1989. The petitioner did not report and, therefore, another communication dated 25th

October, 1989 was issued, relieving the petitioner on 26th October, 1989 with advise to report immediately. Despite all these communications, the petitioner failed to report and he was absent unauthorisedly, without any satisfactory explanation.

4. As there was no compliance of the various communications to report to the place of posting, a show cause notice dated 6th November, 1989, levelling various charges against the petitioner was issued by respondent no.6 which was received by the petitioner on 15th November, 1989. As the said show cause notice was not replied, respondent no.4 issued a chargesheet dated 18th December, 1989. The petitioner resisted the same before respondent no.2 by placing various facts in support of his defence. The respondents initiated departmental proceedings. The petitioner did not lead any evidence in support of his defence. The respondents led the evidence of the two officers by filing an affidavit on record. The enquiry was conducted in 27 sittings, during the period from 18.1.1990 to 7.12.1990. The petitioner had filed his written submissions in writing dated 31st December 1990.

. The respondents, based on the said Enquiry Officer's report dated 12th March, 1991 dismissed the petitioner with immediate effect i.e. 26th August, 1991. The appeal preferred against the order of termination was

dismissed by the order dated 31st December, 1991. The appellate authority, after reassessing the material and considering the submissions as raised by the petitioner has confirmed the order of dismissal dated 19th August, 1991 by holding it to be proper, just and equitable.

5. The petitioner by the present writ petition seeks to challenge the order of dismissal as also the order of the Appellate Authority. The petitioner has also challenged the transfer order dated 22nd June, 1989 by amending the petition. While admitting the petition on 27th April, 1992, there was no ad-interim order passed in favour of the petitioner. The petitioner has been out of the employment since then.

. The relevant Rules of conduct, discipline and appeal as applicable to the management staff like the petitioner and as relevant for the purposes of the present writ petition are reproduced as under:

> Part-I :
>
> Clause 1- Scope of Service : Unless in any case it is otherwise distinctly provided, the whole time of a Management staff shall be at the disposal of the company and he shall serve the company in its business in such capacity and at such place as he may, from time to time, be directed.
>
> Clause 2 - Liability to abide by rules and order: Every Management staff shall conform to and abide by the rules incorporated herein and shall observe, comply with and obey all orders and directions which may from time to time, be given to him in the course of his official duties by any person or persons under

whose jurisdiction, superintendence or control he may for the time being, be placed.

Clause 4(c) - Do nothing which is unbecoming of a Management staff of the company.

Part II-A:

Clause 6- Acting in a manner prejudicial to the interests of the company.

Clause -7 - Wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.

Clause 8 - Absence without leave or over-staying the sanctioned leave without sufficient reasons or proper or satisfactory explanation.

Clause 32- Commissioning of any act subversive of discipline or good behaviour."

. We have considered the submission as raised by the petitioner based on the finding arrived at by the concerned authorities including the Enquiry Officer and as recorded in order/report dated 12th March, 1991. We do not find, in the absence of any material to the contrary and/or any evidence that the order of transfer dated 12th June, 1989 and all actions arising out of the non-compliances of the various orders to be said to be perverse, unjust, illegal and/or malafide. The petitioner failed to lead any evidence to support his case of malafide though alleged. The allegations of malafide, therefore, in the absence of any supporting material, as contended is unacceptable.

6. From the letter of appointment as referred to in the

chargesheet dated 18th December, 1989, there can be no doubt that the respondents had the right to transfer the petitioner. The relevant portion of the appointment order is as under:

> "(6) The Company shall have the right to employ you not only anywhere in its Organisation in India, but also to employ you temporarily or otherwise on special service or assignment with any other firm or Government Company."

The respondent could exercise their normal management right to transfer the petitioner from one place of posting to another place. The petitioner challenged the order of transfer. As noted earlier the petitioner had unsuccessfully agitated the grievance surrounding the said transfer order upto the Apex Court which upheld the order of transfer and in fact at the request of the petitioner granted time to report at the transferred place. The transfer order, therefore, in this background became final and ought to have been obeyed by the petitioner. There is no perversity or illegality in the order of transfer on the facts and circumstances of the case. It is no doubt true that the order was of interim nature. However, nothing additional has been brought to our notice, to take a different view.

7. As the petitioner did not obey the order of transfer though confirmed by the Apex Court, the respondents rightly held a departmental enquiry and after giving a

full opportunity to the petitioner, rightly arrived at the conclusion that the petitioner was guilty of the charges as levelled which are:

> "a) has not served the company in its business at such place and in such capacity as he was directed,
>
> b) did not abide by rules and comply with and obey the orders and directions given to him in the course of his official duties by persons under whose jurisdiction, superintendence and control he was placed,
>
> c) acted in a manner unbecoming of a Management staff of the Company.
>
> d) acted in a manner prejudicial to the interests of the company,
>
> e) wilfully disobeyed lawful and reasonable orders of his superior/s resulting in insubordination.
>
> f) was absent without leave without sufficient reasons or proper or satisfactory explanation from his assigned job.
>
> g) committed acts which were subversive of discipline and good behaviour."

. Even otherwise the petitioner was holding the post of Deputy Manager (Engg.) (Construction). The requirement of sending such persons to assist or coordinate any such construction project appears to be within the service conditions. As recorded, the concerned Project was need to be completed within a time as directed. The petitioner was transferred from project to project, as per the requirement of the respondent-management. In the writ petition filed before this Court a statement made on behalf of the respondent-company was recorded

that he would be brought back within a time frame. In this background the action in no way could be said to be a malafide, vindictive, arbitrary and/or unjust. The petitioner ought to have complied with the order of transfer to serve the company in its business at such places and in such capacity as directed. Such action of willful disobedience definitely amounts to insubordination, unbecoming of a management staff and also prejudicial to the interest of the company.

8. The submission based on the principle of natural justice in no way assists the petitioner to support his case of revoking the order of the dismissal in question. Nothing has been pointed out to us in terms of the relevant rules as to why the enquiry was illegal, bad and/or in breach of principle of natural justice. There is no material even to support the case of bias against the Enquiry Officer. The petitioner admittedly, though afforded all opportunities failed to lead any evidence before the Enquiry Officer, nor even submitted the list of his witnesses. During the course of the enquiry which spread over more than 10 months and 27 sittings, the petitioner placed no material on record except to make bald allegations that his transfer was illegal. There is no justification borne from the record for the petitioner's failure to join at his place of posting as the petitioner has failed to bring any evidence before the Enquiry Officer, to justify his inaction in

non-complying with the direction and/or orders issued by the respondent from time to time regarding the impugned order of transfer in question. The petitioner, as noted, though sought time before the Apex Court to join and/or to report did not comply with the same. The petitioner, therefore, cannot be given a premium for his own wrong. The respondents authorities therefore, based on the Enquiry Report, after assessing the material on the record have passed the order of dismissal. It has been confirmed by the appellate authority. Therefore it is clear that the petitioner was given full opportunity of representation. The punishment imposed was within the frame work of service conditions. The petitioner has failed to show any mitigating circumstance. The petitioner has not been able to make out a case of perversity and/or gross-illegality to interfere with such concurrent findings arrived at by the authorities. The petitioner failed to demonstrate that the respondents transferred the petitioner to humiliate him for his honesty and sincerity and not for any administrative exigency and/or that he was working in the best interest of the respondents. The petitioner has further failed to prove that it was a case of a victimisation because of Union activities as alleged. There is no material to justify his submission of colourable exercise of power; and/or that action or inaction of the petitioner does not constitute misconduct.

9. Taking all the above facts into consideration, we are of the view that the petitioner has not made out any case to grant any relief as prayed by invoking the extraordinary jurisdiction of this Court.

. The petition is, therefore, dismissed. Rule is discharged. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)